

CV 18 - 1564

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
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VERONICA BENNETT,

2018 MAR 14 AM 10:46

Plaintiff,

Civil Action No. 18-CV-11111
U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

v.

(COGAN, J.)
(_____, M.J.)

PHILIP MIU, M.D., ST. JOHN'S EPISCOPAL
HOSPITAL, EPISCOPAL HEALTH
SERVICES INC., and SUNITHA JACOB,
M.D.,

NOTICE OF REMOVAL

Defendants.

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NEW YORK:

PLEASE TAKE NOTICE that an action pending in the Supreme Court of the State of New York, County of Queens, has been removed to the United States District Court for the Eastern District of New York.

RICHARD P. DONOGHUE, United States Attorney for the Eastern District of New York, by GAIL A. MATTHEWS, Assistant United States Attorney, of counsel, respectfully states the following facts upon information and belief:

1. The above-captioned action was commenced in the Supreme Court of the State of New York, County of Queens, Index No. 712069/2017, and names as defendants PHILIP MIU, M.D., ST. JOHN'S EPISCOPAL HOSPITAL, EPISCOPAL HEALTH SERVICES INC., and SUNITHA JACOB, M.D. *See* Summons and Verified Complaint, dated August 30, 2017, and annexed hereto as Exhibit A.

2. On or about October 23, 2017, defendant St. John's Episcopal Hospital filed a Verified Answer in the Supreme Court of the State of New York. *See* Verified Answer, annexed

hereto as Exhibit B.

3. On or about November 1, 2017, defendant Philip L. Miu, M.D., s/h/a Philip Miu, M.D. filed a Verified Answer in the Supreme Court of the State of New York. *See* Verified Answer, annexed hereto as Exhibit C.

4. On or about December 26, 2017, defendant Episcopal Health Services Inc. filed a Verified Answer in the Supreme Court of the State of New York. *See* Verified Answer, annexed hereto as Exhibit D.

5. This action alleges medical malpractice on the part of the defendants. Specifically, the complaint alleges that from on or about February 21, 2017, defendants were negligent in the administration of proper medical care. *See generally* Exhibit A, Complaint.

6. At all relevant times articulated in the Complaint, defendant Sunitha Jacob, M.D. was an employee of the Joseph P. Addabbo Family Health Center, Inc. (“Health Center”), a federally supported health center and deemed by the Department of Health and Human Services, pursuant to the Federally Supported Health Centers Assistance Act, 42 U.S.C. § 233(g)-(n) (“FSHCAA”), eligible for coverage under the Federal Tort Claims Act, and was acting within the course and scope of such deemed employment with the United States of America. *See* Declaration of Meredith Torres, annexed hereto as Exhibit E.

7. At all relevant times articulated in the Complaint, defendant Sunitha Jacob, M.D., as an employee of the Health Center, was deemed, pursuant to 42 U.S.C. § 233(g)-(h), eligible for coverage under the Federal Tort Claims Act, and was acting within the course and scope of such deemed employment with the United States of America. *See* Certification of Scope of Employment and Notice of Substitution of the United States of America by Assistant U.S. Attorney Gail A. Matthews, dated March 14, 2018, attached hereto as Exhibit F.

8. Pursuant to 42 U.S.C. § 233(c) and 28 U.S.C. § 2679(d), this action may be removed to this Court because the Verified Complaint purports to assert claims against the United States of America, by way of defendant Sunitha Jacob, M.D., and purports to raise matters under federal law.

9. Pursuant to 42 U.S.C. § 233(c), 28 U.S.C. § 2679, 28 C.F.R. § 15.4, and the Certification of Scope of Employment, the United States of America is substituted as the party defendant for defendant Sunitha Jacob, M.D. *See* Certification of Scope of Employment (Exhibit F).

10. Pursuant to 28 U.S.C. §§ 2408 and 2679(d)(2) and 42 U.S.C. § 233(c), the United States of America may remove this action without a bond.

11. Plaintiff has not submitted an administrative claim to the Department of Health and Human Services.

12. The United States Attorney's Office has not yet been served with the Summons and Verified Complaint in this action.

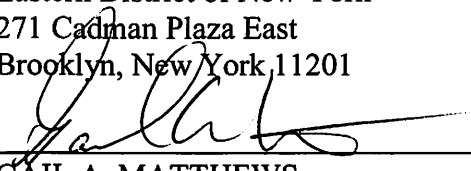
13. In accordance with 28 U.S.C. § 1446(d), the filing of a copy of this Notice with the Clerk of the Court, Supreme Court of the State of New York, County of Queens, shall affect the removal and the local court shall proceed no further with respect to the action, unless and until the case is remanded.

WHEREFORE, it is respectfully requested that the above-captioned action that is pending in the Supreme Court for the State of New York, County of Queens be removed to his Court.

Dated: Brooklyn, New York
March 14, 2018

Respectfully submitted,
RICHARD P. DONOGHUE
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By:


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